IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CMPMO No. 71 of 2007.

Date of Decision: 7th September, 2007.

Sanjiv Kumar Sharma .. Petitioner.

Versus

Gurmit Singh and another .. Respondents.

Coram

The Hon'ble Mr. Justice V.K. Gupta, Chief Justice.

Whether approved for reporting?[1]

For the petitioner: Mr. Karan Singh Kanwar, Advocate.

For the respondents: Mr. K.D. Sood, Advocate.

V.K. Gupta, C. J. (Oral)

Mr. Kapil Dev Sood, learned Counsel appearing for the respondents has very fairly and frankly stated before me that in law he cannot support the impugned order.

Apart from what has been stated before me by Mr. K.D. Sood I myself feel convinced and satisfied that the impugned order dated 16th January, 2007 is patently erroneous on its very face. After the transfer of the suit from this Court to the learned District Judge and thereafter to the learned Additional District Judge, it was the Court of learned Additional District Judge which was in seisin of the matter and hence it was for that Court to deal with, decide and dispose of the application filed under Order 39 Rule 2A of the Code of Civil Procedure. This is notwithstanding the fact that the ad-interim temporary injunction in OMP No.146 of 2001 was granted by this Court at an earlier point of time when Civil Suit No.30 of 2001 was pending in this Court. Actually, I am surprised that the learned Court below even though took notice

[1] Whether the reporters of Local Papers may be allowed to see the judgment?

of the order dated 8th October, 2001 passed by this Court transferring Civil Suit to the learned District Judge, Sirmaur at Nahan, it also reproduced the order transferring the Civil Suit as well as the order passed in OMP No.246 of 2001. A bare reading of the order transferring the Civil Suit and the order passed in OMP No.246 of 2001 on 8th October, 2001 should have left no one in any manner of doubt that the only Court competent to deal with, decide and dispose of OMP No.246 of 2001 was the Court of learned Additional District Judge, Sirmaur at Nahan to which the aforesaid Civil Suit and two applications had been assigned as well as transferred.

My attention was drawn by the learned Counsel for the parties to order dated 18th January, 2007 passed by the learned Additional District Judge, Sirmaur at Nahan upon an application filed by the petitioner in terms of Order 7 Rule 10-A(2) read with Section 151 of the Code of Civil Procedure. In view of the order that I have passed the aforesaid order dated 18th January, 2007 has been rendered otiose and is accordingly set aside with all consequences. The original application (OMP No.246 of 2001) which the petitioner had presented in this Court consequent upon the passing of this order and which is part of this file (at pages 31 to 38) shall be returned to the learned Counsel for the petitioner for its representation before the learned Court below.

The learned Additional District Judge, Sirmaur at Nahan is directed to proceed with the pending application under Order 39 Rule 2A and dispose it of on its merits and in accordance with law.

The petition is disposed of.

September 7, 2007 **(V.K. Gupta), C.J.**
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